

**REMARKS**

**INTRODUCTION**

In accordance with the foregoing, the claims 1, and 12-17 have been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1-5 and 7-18 are pending and under consideration. Reconsideration is respectfully requested.

**REJECTION UNDER 35 U.S.C. §103**

**Rejection of Claims 1-4, 7, 9-12, 14-17, and 18**

In the outstanding Office Action at pages 2-11, numbered item 3, claims 1-4, 7, 9-12, 14-17, and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,366,298 to Haitsuka in view of U.S. Patent No. 6,236,330 to Cohen and further in view of newly cited U.S. Patent No. 5,250,914 to McGregor. The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

Applicant notes that, in the Examiner's Response to Arguments at page 17 of the Office Action, the Examiner has asserted that "as claim 1 is written, the passage count is always zero or one since the passage count of two or more are disregarded." In view of the Examiner's remarks, Applicant has amended independent claim 1 to clarify that the passage count includes:

a number of times the mobile client passes within the predetermined advertising information transmission area and storing the passage count, the passage count including a number of times the mobile client passes within the predetermined advertising information transmission area, and when the mobile client passes through the same transmission area two or more times within a predetermined period of time, the second passage and later are not counted.

Independent claims 12-17 have been similarly amended. Support for this clarification can be found in the originally filed Specification at page 23, line 24 to page 24, line 4.

Haitsuka is directed to the monitoring of individual internet usage and is alleged to teach "receiving position information from a mobile client," "determining a passage count of the mobile client in a predetermined advertising information transmission area in which a position indicated by the position information is located and storing the passage count" with "the passage count including a number of times the mobile client passes within the predetermined advertising information transmission area within a predetermined period of time," and "transmitting to the mobile client advertising information according to the passage count of the mobile client in the predetermined advertising information transmission area." Cohen is directed to a mobile display system and is alleged to define transmission areas, which are not defined in Haitsuka. Newly cited McGregor is directed to monitoring a customer, automobile, or other moving entity by sensing the presence of the customer, automobile, or other moving entity to generate a signal.

McGregor is alleged to cure the deficiencies of Haitsuka and Cohen, and teach "tracking counting a mobile user's passing through a predetermined area over a certain time frame."

McGregor at col. 1, lines 5-25, col. 2, lines 5-11, and col. 2, line 64 to col. 3, line 7 are cited in support of this assertion in the outstanding Office Action at page 5. Applicant respectfully disagrees.

McGregor at col. 1, lines 10-13, states "In particular, the invention provides a monitor and method for counting entities at a plurality of locations and for correlating the count with a time frame." Further, McGregor teaches that the sensor used is operable in a variety of different modes, including "an active mode where the passage of an individual is registered as a count" or "a dwell mode which measures the time individuals remain in a certain area" McGregor at col. 1, lines 15-20. McGregor at col. 2, lines 5-11, merely states that "The invention comprises a comprehensive system for counting entities, such as customers in various locations in a store, and for compiling this data as DIF files in a spreadsheet environment for future analysis. The count is correlated with selected time intervals (e.g., one hour) throughout the day."

McGregor at col. 2, line 64 to col. 3, line 7, teaches that each sensor is programmable for a different mode of operation. Specifically, McGregor teaches "a mode where each signal represents the counting of one entity," "another mode where two signals represents the counting of one entity (corresponding to an entry and exit of a single person)," "a mode where the dwell time of the entity in the vicinity of the sensing means is determined," and "a still further mode where signals from each sensor means is processed as a percentage of the total signals from all other sensor means."

Applicant respectfully submits that McGregor fails to teach or suggest any other "modes of operation." Thus, Applicant respectfully submits that McGregor fails to teach or suggest that "when the mobile client passes through the same transmission area two or more times within a predetermined period of time, the second passage and later are not counted," as recited in the amended independent claims. As Haitsuka and Cohen also fail to teach or suggest this feature, Applicant asserts that McGregor fails to cure the deficiencies of Haitsuka and Cohen. Thus, Haitsuka, Cohen, and McGregor, taken alone or in combination, fail to teach or suggest all of the features of claims 1-4, 7, 9-12, 14-17, and 18. Thus, Applicant respectfully submits that claims 1-4, 7, 9-12, 14-17, and 18 patentably distinguish over the prior art and are in condition for allowance.

### **Rejection of Claims 5 and 13**

In the outstanding Office Action at pages 11-14, numbered item 4, claims 5 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Haitsuka in view of Cohen in further view of McGregor and further in view of U.S. Patent No. 6,332,127 to Bandera. The

reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

As noted above, the McGregor reference fails to cure the deficiencies of Haitsuka and Cohen with respect to claims 1, 7, 12, and 18. Bandera is relied upon only to teach "incentives distinct from advertising" col. 3, lines 19-42. Accordingly, Applicant respectfully submits that Cohen, McGregor, and Bandera fail to cure all of the deficiencies of Haitsuka. As Haitsuka, Cohen, McGregor, and Bandera, taken alone or in combination, fail to teach or suggest all of the features of claims 5 and 13, Applicant respectfully submits that claims 5 and 13 patentably distinguish over the prior art and are in condition for allowance.

#### **Rejection of Claim 8**

In the outstanding Office Action at page 14, numbered item 5, claim 8 was rejected as being unpatentable over Haitsuka in view of Cohen in further view of McGregor and further in view of U.S. Patent No. 6,360,221 to Gough. The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

As noted above, McGregor fails to cure the deficiencies of Haitsuka and Cohen. Gough is relied upon only to teach "that the transmission of advertising information to the client is omitted as instructed by the client" col. 6, lines 30-36. Accordingly, Applicant respectfully submits that Cohen, McGregor, and Gough fail to cure all of the deficiencies of Haitsuka. As Haitsuka, Cohen, McGregor, and Gough, taken alone or in combination, fail to teach or suggest all of the features of claim 8, Applicant respectfully submits that claim 8 patentably distinguishes over the prior art and is in condition for allowance.

#### **Rejection of Claim 17**

In the outstanding Office Action at pages 15-17, numbered item 6, claim 17 was rejected as being unpatentable over Haitsuka in view of Cohen in further view of McGregor and further in view of U.S. Patent No. 6,061,660 to Eggleston. The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

As noted above, McGregor fails to cure the deficiencies of Haitsuka and Cohen. Eggleston is relied upon to teach only "the utilization of awards points as an incentive and related to advertising purposes." Accordingly, Applicant respectfully submits that Cohen, McGregor, and Eggleston fail to cure all of the deficiencies of Haitsuka. As Haitsuka, Cohen, McGregor, and Eggleston, taken alone or in combination, fail to teach or suggest all of the features of claim 17, Applicant respectfully submits that claim 17 patentably distinguishes over the prior art and is in condition for allowance.

## CONCLUSION

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. And further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.


If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 9 December 2005

By:   
Allison Olenginski  
Registration No. 55,509

1201 New York Avenue, NW, Suite 700  
Washington, D.C. 20005  
Telephone: (202) 434-1500  
Facsimile: (202) 434-1501